

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MARC D. SOBEL)	File No. 670861
)	
Application For Consent to Assign the License)	
For Conventional 800 MHz SMR)	
Station KKT934, Montrose, California)	

MEMORANDUM OPINION AND ORDER

Adopted: April 27, 2005**Released: May 2, 2005**

By the Commission:

I. INTRODUCTION

1. We have before us an Application for Review filed by Marc D. Sobel (Sobel) on March 3, 2004.¹ The Application seeks review of an Order released by the Mobility Division (Division) on February 6, 2004,² denying a Petition for Reconsideration (Petition) filed by Sobel on February 11, 2003.³ The Division affirmed the decision of the former Commercial Wireless Division's Licensing and Technical Analysis Branch (Branch),⁴ which dismissed Sobel's application seeking to assign the license for Station KKT934 from M.R. Groff (Groff) to Sobel. For the reasons discussed below, we deny Sobel's Application for Review.

II. BACKGROUND

2. On June 9, 1994, Sobel filed an application seeking approval of the assignment of the license for conventional Business Radio (GB) Station KKT934 from M.R. Groff (Groff) to Sobel. In his assignment application, Sobel also sought approval to convert the station license to conventional SMR service (GX) and to add two more sites to the license.⁵ On June 24, 2002, the Branch issued a renewal reminder letter to Groff, but the license expired on September 16, 2002, because Groff failed to submit a

¹ Application for Review, filed by Marc D. Sobel (Mar. 3, 2004).

² In the Matter of Marc D. Sobel for Consent to Assign the License For Conventional 800 MHz SMR Station KKT934, Montrose, California, *Order*, 19 FCC Rcd 2190 (2004) (*Division Order*).

³ Petition for Reconsideration, filed by Marc D. Sobel (Feb. 11, 2003) (Petition).

⁴ In late 2003, the Commission's Wireless Telecommunications Bureau was reorganized. Many of the mobile radio services licensing issues formerly under the Bureau's Commercial Wireless Division, including Part 90 conventional Specialized Mobile Radio (SMR) operations, are now under the purview of the Bureau's new Mobility Division. See FCC's Wireless Bureau Announces Reorganization, *Public Notice* (rel. Nov. 24, 2003).

⁵ See 47 C.F.R. § 90.615 (listing the 150 General Category channels available for use as 800 MHz SMR General Category channels).

license renewal application.⁶ On January 12, 2003, the Branch dismissed Sobel's assignment application because the license for Station KKT934 had expired.⁷

3. Sobel filed a Petition for Reconsideration on February 11, 2003, first arguing that expiration of the underlying license did not justify the dismissal of a pending assignment application for that license.⁸ Second, Sobel argued that under Section 9(b) of the Administrative Procedure Act (APA),⁹ his pending assignment application extended the effectiveness of the underlying license until the Commission acted on his application, and thus his application should have been processed even though the license expiration date had passed.¹⁰ Third, Sobel argued that the application would have been granted before the license expired, but the Wireless Telecommunications Bureau (Bureau) "ignored" his assignment application so that it could dismiss the application after the underlying license expired.¹¹

4. On February 6, 2004, the Division denied Sobel's Petition and affirmed the Branch's dismissal of Sobel's assignment application noting that the arguments Sobel had raised in this case were identical to arguments previously rejected in two Commission orders.¹² In its *Order*, the Division reiterated the Commission's findings that the filing of an assignment application does not relieve a Commission licensee of the responsibility to renew its license, and that Groff could not assign an expired license;¹³ Sobel's assignment application is not protected from dismissal under Section 9(b) of the APA,¹⁴ which permits an existing licensee to continue to operate while its renewal application is pending;¹⁵ and the delay in processing Sobel's application was not a "scheme" to delay processing Sobel's application, but that Groff's inaction led to dismissal of Sobel's application. On March 3, 2004, Sobel sought review of the Division's decision from the Commission.

⁶ Under former rule Section 90.149(b), effective at the time Sobel filed his assignment application, if a licensee failed to file a renewal application, the license was deemed to have automatically cancelled on the date specified on the authorization. 47 C.F.R. § 90.149(b) (1995). The currently effective rule, Section 1.955(a)(1), is not substantively different from the rule effective at the time Sobel filed his assignment application. 47 C.F.R. § 1.955(a)(1) (providing that "[a]uthorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed").

⁷ ULS Automated Letter Information, Reference No. 1691209 (Jan. 12, 2003).

⁸ Petition at 1-2.

⁹ 5 U.S.C. § 558.

¹⁰ Petition at 1-2.

¹¹ Petition at 2.

¹² *Division Order*, 19 FCC Rcd at 2191, ¶ 4 (citing *In the Matter of James A. Kay, Jr., Application for Modification of and Consent to the Assignment of the License for Business Radio Service Station WIK902, Order*, 18 FCC Rcd 2366 (2003) (*Kay-Padilla*); *In the Matter of James A. Kay, Jr., Application for Consent to Assign the License for Conventional SMR Station WNXR890, Newbury Park, California, Memorandum and Opinion and Order*, 18 FCC Rcd 7585 (2003) (*Kay-Cordaro*)).

¹³ *Division Order*, 19 FCC Rcd at 2191-92, ¶ 4.

¹⁴ 5 U.S.C. § 558(c).

¹⁵ *Division Order*, 19 FCC Rcd at 2192, ¶ 5.

III. DISCUSSION

5. As the *Division Order* noted, Sobel's arguments raised in this case are identical to arguments previously raised and rejected in our *Kay-Padilla*¹⁶ and *Kay-Cordaro* decisions.¹⁷ As we held in both cases, a pending assignment application does not extend the expiration date of an underlying Commission license.¹⁸ A Commission licensee remains subject to our rules, including operational and renewal provisions, even where an assignment or transfer of control application is pending for the underlying license.¹⁹ As the licensee for Station KKT934, Groff was responsible for filing a renewal application notwithstanding the pending assignment application. As a result of Groff's failure to renew his authorization – a fact that Sobel does not dispute – the license for Station KKT934 expired on its own terms. Because an expired license cannot be assigned,²⁰ the Branch correctly applied our rules when it dismissed the assignment application.

6. We also disagree with Sobel's contention that his assignment application is protected from dismissal under Section 9(b) of the APA. Section 9(b) provides, in relevant part, that "[w]hen the licensee has made timely and sufficient application for a renewal or new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency."²¹ As we stated both in *Kay-Padilla* and *Kay-Cordaro*, Section 9(b) applies to renewal and new applications, not to assignment applications, and we reject the notion that a license assignment should be treated as synonymous to an initial grant or a license renewal for purposes of this statutory provision.²² Consistent with our previous decisions, the Division correctly determined that Section 9(b) does not apply here.

7. We also find no merit in Sobel's contention that staff unilaterally imposed a "freeze" on Sobel's applications when, according to Sobel, it could have conditionally granted his assignment application subject to the outcome of the ongoing license revocation proceedings against Sobel.²³ Sobel has neither presented any evidence that the Bureau's uncharacteristic delay in acting on his application

¹⁶ In *Kay-Padilla*, Kay filed an assignment application in 1994, after which the underlying license expired while the assignment application was pending because the licensee failed to file a renewal application, and the assignment application was dismissed in 2000.

¹⁷ In *Kay-Cordaro*, Kay filed another assignment application in 1994, after which the underlying license expired while the assignment application was pending because the licensee failed to file a renewal application, and the assignment application was dismissed in 2000.

¹⁸ *Kay-Padilla*, 18 FCC Rcd at 2367, ¶ 5; *Kay-Cordaro*, 18 FCC Rcd at 7586, ¶ 5.

¹⁹ See In the Matter of Peacock's Radio and Wild's Computer Service, Inc., and 21st Century Wireless Group, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd. 15,016, ¶¶ 5, 6 (2001); In the Matter of Applications of Robert D. Ryan, *Order on Reconsideration*, 2002 WL 1798567, ¶ 8 (PSPWD 2002). See also Biennial Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd. 11,476, ¶ 21 (1999).

²⁰ *Kay-Padilla*, FCC 18 FCC Rcd at 2367, ¶ 5; *Kay-Cordaro*, 18 FCC Rcd at 7586-87, ¶ 5.

²¹ 5 U.S.C. § 558(c).

²² See *Kay-Padilla*, 18 FCC Rcd at 2368-69, ¶ 7; *Kay-Cordaro*, 18 FCC Rcd at 7587, ¶ 6. In *Kay-Padilla*, the Commission stated that it has been previously found that a license that expires on its own terms is not protected under Section 9(b) of the APA. *Kay-Padilla*, 18 FCC Rcd at 2368-69, ¶ 7 (citing *Atlantic Richfield Co. v. United States*, 774 F.2d 1193 (D.C. Cir. 1985)).

²³ Application for Review at 3.

was the result of some staff decision to ignore or freeze his applications,²⁴ nor has Sobel presented any evidence that he ever sought a conditional grant of his assignment application. Sobel's allegation entirely overlooks the fundamental fact that it was Groff's failure to file for renewal, not the staff's inaction on the assignment application, that caused the license for Station KTT934 to expire. Because Groff failed to file a renewal application, the license expired on its own terms, and, therefore, as we stated above, there was nothing to assign. It is well-established that licensees are responsible for submitting renewal applications in a timely manner.²⁵ Because Groff failed to file a renewal application, the license expired on its own terms, and, therefore, as we stated above, there was nothing to assign. Accordingly, we deny Sobel's Application for Review.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 5(c)(5), and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 155(c)(5), 303(r), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by Marc D. Sobel on March 3, 2004, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁴ We reiterate as noted in the *Division Order*, the uncharacteristic delay in acting on Sobel's assignment application was the result of a pending hearing proceeding regarding Sobel's fitness to be a Commission licensee. *See* In the Matter of Marc Sobel, Applicant for Certain Part 90 Authorizations in the Los Angeles Area and Requestor of Certain Finder's Preferences, *Decision*, 17 FCC Rcd 1872 (2002) (revoking Sobel's licenses for facilities operating in the 800 MHz band, denying his pending 800 MHz applications, and dismissing his finder's preference requests for those facilities based on the finding that Sobel transferred control of some of facilities without Commission authorization and that he lacked candor about the status of these facilities in a sworn affidavit) (Martin, K. concurring in part, dissenting in part), *recon. denied, Memorandum Opinion and Order*, 17 FCC Rcd 8562 (2002); *appeal dismissed on procedural grounds sub nom. Sobel v. FCC*, No. 02-1174, slip op. (D.C. Cir. Oct. 2, 2002), *recon. denied*, In the Matter of Marc Sobel, Applicant for Certain Part 90 Authorizations in the Los Angeles Area and Requestor of Certain Finder's Preferences, *Memorandum Opinion and Order*, 19 FCC Rcd 801 (2004).

In addition, as the Commission noted in *Kay-Cordaro*, in 2002, the year Groff's license expired, the Bureau disposed of 77 percent of assignment applications within 90 days, 95 percent within 180 days, and 99 percent within one year. *Kay-Cordaro*, 18 FCC Rcd at 7587, ¶ 8 n.22.

²⁵ *See, e.g.*, In the Matter of Applications of Peacock's Radio and Wild's Computer Service, Inc., and 21st Century Wireless Group, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 15,016, ¶ 5 (2001) (holding that "[e]ach licensee is solely responsible for knowing the terms of its license and submitting a renewal application in a timely manner"); In the Matter of the Application of Sierra Pacific Power Company, *Order*, 16 FCC Rcd 188, ¶ 6 (PSPWD 2001) (holding that "each licensee bears the exclusive responsibility of filing a timely renewal application"); In the Matter of Alameda-Contra Costa Transit District Private Land Mobile Stations KBY746, WFS916, and KM8643, *Order*, 15 FCC Rcd 24,547, ¶ 10 (PSPWD 2000) (holding that "each licensee is responsible for knowing the expiration date of its licenses and submitting a renewal of [its] license application in a timely manner"). *See also* Biennial Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11,476, ¶ 21 (1999).